

**Health Care and Retirement Corporation, d/b/a Heartland of Martinsburg and District 1199, The Health Care and Social Service Union, SEIU, AFL-CIO, Petitioner. Case 5-RC-13892**

February 15, 1994

**DECISION AND ORDER REMANDING**

BY CHAIRMAN STEPHENS AND MEMBERS  
DEVANEY AND TRUESDALE

The issue presented here is whether the Regional Director correctly recommended overruling the Employer's objections to the election because the Employer failed to submit signed witness statements or affidavits in support of the objections.<sup>1</sup> The Board has reviewed the record in light of the exceptions and brief, and has decided, for the reasons set forth below, to reverse the Regional Director and to remand this proceeding for investigation of the objections.

Prior to the election, the Regional Office mailed the Employer a form entitled "Notice of Procedures to be Followed when Filing Objections to an Election with Region 5 and/or After Elections(s) in Which there are Determinative Challenged Ballot(s)." This notice stated, in relevant part, that evidence submitted in support of objections should be a "list of all witnesses whose testimony is relied on to support the objections, together with the written statements or affidavits incorporating the witnesses' testimony and *signed by the witness*." (Emphasis in the original.) The Employer has denied receiving this document.

The election took place on July 1, 1993. On July 9, the Employer timely filed objections stating that the Board should set aside the election because of alleged threats of violence by union agents and of alleged prounion activity by supervisors. On July 19, counsel for the Employer timely filed evidence in support of its objections. This evidence consisted of a 13-page evidentiary statement and three attached documents. The statement provided specific descriptions of allegedly objectionable activity, lists of witnesses who could provide testimony about this activity, and legal argument.

The Regional Director found that the Employer had not met its obligation to provide evidence in support of the objections. He did not directly assess the Employer's evidentiary statement. Instead, the Regional Director found that the Employer's submission was inadequate because it had failed to submit signed witness statements or affidavits, as required by Region 5 in its

notice of postelection procedures. We disagree that this was an inadequate submission under applicable Board rules.

Section 102.69(a) of the Board's Rules and Regulations states, in pertinent part,

Within 7 days after the filing of objections, or such additional time as the Regional Director may allow, the party filing objections shall furnish to the Regional Director the evidence available to it to support the objections.

The Rules do not further define the nature of the evidence that the objecting party must submit in order to initiate a Regional Director's investigation. Contrary to the Regional Director and Region 5's procedural notice, however, the Board does not require that such evidence include signed witness statements or affidavits.<sup>2</sup>

In *Holladay Corp.*, 266 NLRB 621 (1983), a case also involving Region 5, the Board held that when an objecting party has provided details of the alleged objectionable conduct and identified witnesses who allegedly could provide supporting evidence, the Regional Director could not overrule the objections solely on the basis that the objecting party had not produced witnesses or their affidavits. Recognizing the practical difficulties which may confront an objecting party in securing the voluntary cooperation of employee witnesses, the Board emphasized that the critical prerequisite to a full investigation of specific allegations in objections is the submission of names of witnesses who can provide direct relevant testimony.

We discern no material difference between *Holladay* and the present case. The employer in *Holladay* submitted the hearsay affidavit of its vice president, who related what two named employees had told him about alleged objectionable conduct. The Employer here submitted counsel's hearsay description of alleged objectionable conduct and the names of witnesses who could provide direct testimony about it. This was sufficient information to warrant a full investigation of the issues raised in the objections. Accordingly, we conclude that the Regional Director's failure to conduct an investigation was an abuse of discretion. We shall remand these objections to the Regional Director for a full investigation or a hearing as he deems appropriate.

**ORDER**

It is hereby ordered that this proceeding be remanded to the Regional Director for a supplemental report on the Employer's objections. This report may be based on a full investigation or, if necessary, on evidence adduced at a hearing. Such Supplemental Report

<sup>1</sup> The National Labor Relations Board has considered the objections to the election held on July 1, 1993, and the Regional Director's disposition of them. The election was held pursuant to a Stipulated Election Agreement. The tally of ballots shows 47 for and 37 against the Petitioner, with 5 challenged ballots, an insufficient number to affect the election.

<sup>2</sup> Consequently, it is immaterial whether the Employer actually received the preelection notice of procedures.

on Objections shall contain recommendations concerning whether the alleged threats by the Petitioner and the alleged prounion conduct of supervisors constituted objectionable conduct warranting the setting aside of the July 1, 1993 election.

IT IS FURTHER ORDERED that the hearing officer designated for the purpose of conducting any hearing pursuant to this Order shall prepare and cause to be served on the parties a report containing resolutions of credibility of witnesses, findings of fact, and recommendations to the Board as to the disposition of said objections. Within 14 days from the issuance of

such report, either party may file with the Board in Washington, D.C., eight copies of exceptions thereto. Immediately on the filing of such exceptions, the party filing the same shall serve a copy thereof on the other party and shall file a copy with the Regional Director. If no exceptions are filed thereto, the Board will adopt the recommendations of the hearing officer.

IT IS FURTHER ORDERED that this proceeding is referred to the Regional Director for Region 5 for the purpose of conducting a full investigation or hearing, and that the Regional Director is authorized to issue notice of any such hearing.